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4 Attorneys for Defendants
Lee's General Toys, Inc., and
John Lee
5
6

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 CASE. NO. 07 CV 2391
(JAH POR)
11 GEORGIA-PACIFIC CONSUMER)
12 PRODUCTS LP, a Delaware limited)
13 partnership,)
14 Plaintiff,)
15 vs.)
16 LEE'S GENERAL TOYS, INC., a California)
17 corporation, JOHN LEE, an individual; and))
DOES 1-10,)
18 Defendants.) (Assigned to Hon.
19) J. Houston)
20
21 DEFENDANTS LEE'S GENERAL TOYS, INC. a California Corporation,
22 and JOHN LEE hereby respectfully each answer the Plaintiff's
23 Complaint and both request a jury trial:
24

DEFENDANTS' ANSWERS

25 1. With regard to the entire complaint, Defendants have not
26 prepared their case for trial and so these answers are subject to
27 information presently available.

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1 JURISDICTION AND VENUE

2 2. With regard to paragraph 1, Defendants deny that they have
3 any liability under the statutes listed or under the common law,
4 and believe that it is Plaintiff which has created any misunderstanding,
5 and that any misunderstanding should have been resolved
6 without a lawsuit; however, Defendants believe that Plaintiff has
7 set forth the various statutes and common law which relates to
8 the issues of trademark and unfair competition law.

9 3. With regard to paragraph 2, Defendants admit that the court
10 has subject matter jurisdiction; with regard to paragraph 3,
11 Defendants admit that they are subject to the jurisdiction of the
12 court but deny that they promoted, advertised or sold any unauthorized
13 goods since Defendants believe that their tissue product
14 (Angelite) has no similarity to Plaintiff's package wrapping and
15 that Plaintiff has apparently filed this lawsuit to discourage
16 honest and fair competition in the toilet paper market.

17 4. Defendants are located in the Central District of California
18 and believe that venue is proper in that District; moreover,
19 Defendants deny that they have infringed on Plaintiff's trademark
20 since an examination of the two tissue wrappings shows that they
21 differ in type, color, name, among other differences.

22 THE PARTIES

23 5. Defendants have no knowledge of what Does Plaintiff refers
24 to (paragraph 8) and what Plaintiff's corporate status is (para-
25 graph 1) Defendants admit the allegation in paragraph 6, and
26 admit that John Lee is an individual (paragraph 7) but strongly
27 deny that he has infringed on any trademark owned by Plaintiff

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(since the two competing products are vastly difference in appearance, among other details). Moreover, as Plaintiff is aware, Defendant has a valid California trademark in the name Angelite and has held this trademark since 2003. Plaintiff's delay in filing this lawsuit has seriously prejudiced Defendants. Further, Defendants acted at all times in good faith believing that their trademark was valid.

GENERAL ALLEGATIONS

6. Defendants have no knowledge at to those allegations dealing with the background and history of Angel Soft which are set forth at length in paragraphs 9 through 19, inclusive. For example, Defendants do not know when Georgia-Pacific, which apparently was a defunct railroad company, began marketing and distributing bathroom tissue. Also, Defendants have no knowledge of Georgia-Pacific's registered trademarks or any assignments and therefore cannot admit or deny these allegations or the other allegations listed in the above paragraphs.

7. Defendants have no knowledge of the supposed fame and advertising and market share and the alleged billions it has spent to promote its bathroom tissue product (as set forth in paragraphs 20-31. These and the many other allegations set forth in paragraphs 9 through 49 are factual (or apocryphal) and subject to proof in discovery. For example, Defendants have no way of knowing at present whether Plaintiff has in fact spent 22 million in advertising (paragraph 21) or sold billions of dollars of tissues (paragraph 27) or the number of visitors to its web site (paragraph 24). Therefore, at present Defendants are unable to admit or deny the allegations set forth in paragraphs 20

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1 through 31, inclusive.

2 8. Defendants admit that they are engaged in those activities
3 listed in paragraph 32.

4 9. Defendants deny the allegations in paragraph 33 insofar as
5 they claim that Defendants have infringed any trademark or that
6 the respective bathroom products are "confusingly similar"--as
7 Plaintiff's own complaint shows, the products use totally differ-
8 ent type and packaging. Moreover, Defendants hold a valid Cali-
9 fornia trademark and have since 2003.

10 10. Paragraph 34 appears to be an accurate depiction of Ange-
11 lite 525 and Angelite 500.

12 11. Defendants deny that their product is "confusingly simi-
13 lar" to Plaintiff's products--as alleged in paragraph 35. A
14 visual comparison of the packaging shows that the products are
15 different in type and coloring.

16 12. Defendants deny those specious allegations listed in
17 paragraphs 36, 37, 38, and 39 on the following grounds, among
18 others: Defendants had no intent to associate itself with Plain-
19 tiff--in fact, Defendants have had a valid California trademark
20 since 2003. Moreover, Defendants deny that its products cause any
21 confusion or are deceptive--and that no reasonable consumer would
22 mistake Defendants' tissue for Plaintiff's. In fact, consumers
23 Defendants have recently surveyed are shocked at this baseless
24 lawsuit.

25 13. With regard to paragraphs 40 and 41, Defendants deny that
26 their Angelite products would cause the reasonable consumer to be
27 confused--the two products have totally different packaging.

1 Moreover, Plaintiff has admitted that the word "soft" cannot be
2 trademarked--and that the Trade Mark Office has admonished Plaintiff
3 not to claim otherwise. Defendants intend to immediately
4 file a FOI act request to obtain all files reflecting Plaintiff's
5 unsuccessful battle with the United States Trademark Office.
6 Further, Defendants specifically deny that their conduct was
7 willful and deliberate.

8 14. With regard to paragraphs 42 and 43, Defendants deny their
9 their actions were wrongful and deny that Plaintiff is entitled
10 to an injunction since Defendants have a valid California trade-
11 mark.

12 15. With regard to paragraphs 44 and 45 Defendants admit that
13 they applied for an received a California trademark and that they
14 have sold their product in various locations in Southern Califor-
15 nia.

16 16. With regard to paragraphs 46 and 47, Defendants deny that
17 Plaintiff's of the
18 trademark.

19 17. With regard to paragraphs 48 and 49, Defendants intend to
20 undertake discovery as to when Defendants may have filed their
21 trademarks and so cannot admit or deny the allegations at this
22 time, except to state that Defendants' California trademark is
23 not confusing since its color and design and lettering are dif-
24 ferent from Defendants. Moreover, and this denial is incorporated
25 into all paragraphs, the word Soft cannot be trademarked--and
26 Defendants fail to understand how Plaintiff can claim that the
27 world Angel belongs to them.

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ANSWER TO FIRST CLAIM FOR RELIEF

(Trademark Infringement Under 15 USC 1114)

18. Defendants (and each of them) answer the allegations in paragraph 50 by realleging and incorporating by reference the facts pled in paragraphs 1-17, inclusive of this answer.

19. Defendants admit the claims in paragraph 51, insofar as it accurately states the law.

20. At this time, Defendants have not undertaken discovery, so have no basis upon which to admit or deny the allegation in paragraph 52.

21. Plaintiff's allegations are vague in that they do not have any factual statements, so at this time Defendants are unable to admit or deny those allegations set forth in paragraph 53--for example, Defendants have no idea of what secondary meaning Plaintiff is referring to--that Georgia-Pacific has given the word "angel" a secondary meaning that only belongs to it?

22. Defendants deny the allegations set forth in paragraph 54 at this time since they have not had an opportunity to undertake discovery and further deny that the general public associates an old railroad company with bathroom tissue or that Plaintiff's product has "a high degree of distinctiveness and are famous," etc.

23. Defendants strongly deny each and every allegation in paragraph 55--and this denial should also be read into every other paragraph--since Defendants' Angelite is in no way confusing to the public, in no way unfairly completes with Plaintiff's products, in no way causes "mistakes among customers," and in no

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way infringes upon Plaintiff's trademark (since the packages are totally different in appearance and font style).

24. Defendants strongly deny (as claimed in paragraph 56) that their conduct was willful or that they infringed upon Plaintiff's trademarks.

25. With regard to paragraph 57, Defendants deny that they have injured Plaintiff since Defendants have a valid trademark and moreover the two products are not even remotely alike (so as to confuse the ordinary consumer).

26. Defendants deny all the allegations in paragraph 58--for example, Plaintiff has not submitted any declarations from consumers alleging they were confused.

ANSWER TO SECOND CLAIM FOR RELIEF

(Common Law Trademark Infringement)

14 27. Defendants (and each of them) answer the allegations in paragraph 59 by realleging and incorporating by reference the facts pled in paragraphs 1-17, inclusive of this answer.

15 28. Defendants admit the allegations in paragraph 60 (but deny any liability).

16 29. Defendants deny each and every allegation in paragraph 61--on among other grounds, the two products are totally dissimilar.

17 30. Defendants deny each and every allegation in paragraph 62 on, among other grounds, they applied for and were granted a California trademark in 2003.

18 31. Defendants deny each and every allegation in paragraph 63 on, among other grounds they applied for and were granted a California trademark in 2003.

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ANSWER TO THIRD CLAM FOR RELIEF

(False Designation of Origin Under 15 USC 1125 (a))

32. Defendants (and each of them) answer the allegations in paragraph 64 by realleging and incorporating by reference the facts pled in paragraphs 1-17, inclusive of this answer.

33. Defendants admit the allegations in paragraph 65 (but deny any liability).

34. Defendants have not undertaken discovery and so at present are unable to admit or deny those allegations in paragraph 66.

35. Defendants deny those allegations in paragraph 67 and further do not know what particular secondary meaning that Plaintiff claims.

36. Defendants deny all the allegations in paragraph 68 in that the public was not confused, the products are not confusing, and in fact are totally different in wrapping and packaging. The only similarity is that both tissues are made out of paper and are the color white.

37. Defendants deny all the allegations in paragraph 69 and deny that their behavior was willful--Defendants applied for and received a California trademark in 2003--and since then Plaintiff has sat on its rights, if any.

38. Defendants deny that they have damaged Plaintiff since their own trademark is valid.

39. Defendants deny each and every allegation in paragraph 71 on, among other grounds, they applied for and were granted a California trademark in 2003.

27

28

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ANSWER TO FOURTH CLAIM FOR RELIEF
(False Advertising Under 15 USC 1125 (a))

2
3 40. Defendants (and each of them) answer the allegations in
4 paragraph 72 by realleging and incorporating by reference the
5 facts pled in paragraphs 1-17, inclusive of this answer.

6 41. Defendants admit the allegations in paragraph 73 (but deny
7 any liability).

8 42. Defendants deny all the allegations in paragraph 74 in
9 that the public was not confused, the products are not confusing,
10 and in fact are totally different in wrapping and packaging. The
11 only similarity is that both tissues are made out of paper and
12 are the color white.

ANSWER TO FIFTH CLAIM FOR RELIEF

(Trademark Dilution Under 15 USC 1125 (c))

13
14 43. Defendants (and each of them) answer the allegations in
15 paragraph 75 by realleging and incorporating by reference the
16 facts pled in paragraphs 1-17, inclusive of this answer.
17
18 44. Defendants admit the allegations in paragraph 76 (but deny
19 any liability); as to paragraph 77 Defendants have not yet under-
20 taken discovery and reserve the right to contest venue.
21
22 45. Defendants have not yet undertaken discovery and therefore
23 are unable to admit or deny whether Plaintiff's trademarks are
24 "famous" (as alleged in paragraph 78) The word "soft," for exam-
25 ple, as Defendants understand it, was not allowed to be trade-
26 marked by the US Trademark Office.
27
28 46. Defendants deny each and every allegation in paragraphs 79-
82, inclusive: for example, Plaintiff's alleged trademark is not

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public's
this lawsuit has no
mind,

reasonable basis in fact, Plaintiff has no trademark in the word "soft," and so Plaintiff's reputation has not been tarnished or injured. Moreover, Defendants' conduct was not willful: in fact, Defendants applied for and obtained a California trademark in 2003 (and Plaintiff has sat on its alleged rights for four years).

47. Defendants deny all the allegations in paragraphs 83 and 84 in that the public was not confused, the products are not confusing, and in fact are totally different in wrapping and packaging. The only similarity is that both tissues are made out of paper and are the color white and therefore Plaintiff cannot be damaged or injured under the law.

ANSWER TO SIXTH CLAIM FOR RELIEF

(Dilution Under California Business & Professions Code 14330 and California Common Law)

48. Defendants (and each of them) answer the allegations in paragraph 85 by realleging and incorporating by reference the facts pled in paragraphs 1-17, inclusive of this answer.

49. Defendants admit the allegations in paragraph 86 (but deny any liability).

50. Defendants have not undertaken discovery and so at this time cannot admit or deny the allegations in paragraph 87.

51. Defendants deny all the allegations in paragraph 88 on the grounds that Angelite is not likely to dilute Plaintiff's trademark on the grounds that the products are totally dissimilar and that this lack of similarity can be determined by examining the

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1 photos in Plaintiff's complaint.

2 52. Defendants deny all the allegations in paragraphs 90 and
3 in that the public was not confused, the products are not
4 confusing, and in fact are totally different in wrapping and
5 packaging. The only similarity is that both tissues are made out
6 of paper and are the color white and therefore Plaintiff cannot
7 be damaged or injured under the law.

8 ANSWER TO SEVENTH CLAIM FOR RELIEF

9 (Unfair Competition Under California Business & Profes-

10 sions Code Section 172 and California Common Law)

11 53. Defendants (and each of them) answer the allegations in
12 paragraph 92 by realleging and incorporating by reference the
13 facts pled in paragraphs 1-17, inclusive of this answer.

14 54. Defendants admit the allegations in paragraph 93 (but deny
15 any liability).

16 55. Defendants deny that they have intentionally caused any
17 confusion since the products are so dissimilar that no reasonable
18 member of the public would be confused; moreover, they have
19 competed fairly in that they have a California trademark. These
20 false allegations are set forth in paragraph 94.

21 56. Defendants deny all the allegations in paragraph 95.

22 57. Defendants deny the allegations in paragraph 96 that
23 Plaintiff has been damaged (since there is no cause of action
24 under California state law).

25 ANSWER TO EIGHTH CLAIM FOR RELIEF

26 (Unfair Competition Under California Business and

27 Professions Code Section 17200 and California Common Law)

28

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58. Defendants (and each of them) answer the allegations in
1 paragraph 98 by realleging and incorporating by reference the
2 facts pled in paragraphs 1-17, inclusive of this answer.

3
4 59. Defendants deny that they violated the Lanham Act or any
other statute or common law claim (and hereby incorporate this
5 into every paragraph in their answer).

6
7 60. Defendants admit that this court has jurisdiction. However,
8 discovery has not been undertaken with regard to venue
(though it seems likely that venue may be proper).

9
10 61. Defendants deny the allegation set forth in paragraph 100
that their Angelite bathroom tissue is in any way similar to
11 Plaintiff's--the color of the packaging is different, the type
12 different--and Defendants do not use the term "soft" which Plain-
13 tiff has not been able to trademark.

14
15 62. Defendants deny that they violated the Lanham Act or any
other statute or common law claim (and hereby incorporate this
16 into every paragraph in their answer).

17
18 63. Defendants deny the allegations in paragraph 102 that
Plaintiff has been injured (since there is no cause of action
19 under California state law or federal law).

20
21 ANSWER TO NINTH CLAIM FOR RELIEF

22
23 (Unlawful Importation of Goods Bearing Infringing Marks
in violation of 19 USC 1576 (a)

24
25 64. Defendants (and each of them) answer the allegations in
paragraph 103 by realleging and incorporating by reference the
facts pled in paragraphs 1-17, inclusive of this answer.

26
27 65. Defendants admit that Plaintiff has alleged a statutory
28 claim (paragraph 104) but deny any liability.

1 66. Defendants deny the allegation set forth in paragraph 105
2 that their Angelite bathroom tissue is in any way similar to
3 Plaintiff's--the color of the packaging is different, the type
4 different--and Defendants do not use the term "soft" which Plain-
5 tiff has not been able to trademark.

6 67. Defendants deny that they have unlawfully imported any
7 infringing goods as claimed in paragraph 106.

8 68. Defendants deny the allegations in paragraph 107 that
9 Plaintiff has been injured (since there is no cause of action
10 under California state law or federal law).

ANSWER TO TENTH CLAIM FOR RELIEF

(Cancellation of State Trademark Registration)

13 69. Defendants (and each of them) answer the allegations in
14 paragraph 108 by realleging and incorporating by reference the
15 facts pled in paragraphs 1-17, inclusive of this answer.

16 70. Defendants admit that Plaintiff seeks cancellation of its
17 trademark but believes that this action is not proper since
18 Plaintiff has unreasonably delayed in bringing its claim and
19 moreover Defendant has a valid trademark (in that there is no
20 confusion of the separate products. Therefore, Defendants deny
21 those allegations set forth in paragraphs 109 and 110.

AFFIRMATIVE DEFENSES FOR ALL DEFENDANTS

23 Defendants request that this court deny all those claims set
24 forth in paragraphs 1 through 23 on the following grounds among
25 others: Plaintiff has unreasonably delayed in filing this action,
26 Plaintiff has no injuries, no damages, no right to attorneys'
27 fees, no claim under state or federal law, no right to any in-

junctionive relief since the balance of hardships tips toward Defendants, no right to injunctive relief since Defendants have a valid state trademark, no right to attorneys' fees or treble damages since Defendants have acted in faith and shown their willingness to cooperate. Defendants respectfully request a trial by jury

First Affirmative Defense

(Failure to State Facts Sufficient to Constitute a Cause of Action)

71. Defendants, and each of them, are informed and believe and upon that basis allege that the Complaint and each claim for relief fails to state facts sufficient to constitute a clause of action and that Plaintiff's punitive damage allegations lack sufficient factual allegations and are without merit.

Second Affirmative Defense

(Innocent and Unintentional Conduct)

72. Defendants, and each of their, conduct at all times was in good faith, innocent, not willful, not malicious, and unintentional with regard to any infringement of Plaintiff's trademarks or any other valid intellectual property. Further, Defendants, and each of their, conduct had social utility--for example, attempts to engage in international trade and on balance this social utility outweighed any unintentional conduct and was not inherently wrongful.

Third Affirmative Defense

(Conduct Not Knowingly Wrongful)

28

Fourth Affirmative Defense

Conduct Not Malicious

8
9 not malicious or oppressive or willful or deliberate or reckless
10 or unfair or intended to harm Plaintiff to support or justify any
11 punitive damage claims or claims for attorneys' fees or for
12 treble damages.

Fifth Affirmative Defense

(Reasonable and Good Faith)

15 /5. Defendants, and each of them, has acted reasonably and
16 immediately upon learning of Plaintiff's intellectual property
17 claims through this lawsuit by stating that it was willing to
18 engage in discussions to resolve any dispute and to cooperate in
19 informal discovery.

Sixth Affirmative Defense

(EstoppeL)

23 Defendants offered to cooperate with Plaintiff immediately
24 upon learning of its claims--even though Defendants dispute the
25 validity of Plaintiff's trademarks--and Plaintiff should be
26 estopped from proceeding with this lawsuit in an effort to drive
27 up attorneys' fees and harass Defendants, a small family run toy
company in Los Angeles. Moreover, Plaintiff should be estopped

1 from receiving any injunctive relief since Defendant hold a valid
2 California trademark and Plaintiff has unreasonably delayed in
3 seeking relief.

4 Seventh Affirmative Defense

5 (Unclean Hands)

6 77. Defendants have acted in good faith but Plaintiff has
7 come into court claiming via its lawyers that Hispanic shoppers
8 are somehow less sophisticated than others and will be confused.

9 Eighth Affirmative Defense

10 (Comparative Fault)

11 78. Plaintiff's damages, if any, were caused in whole or in
12 part by its own comparative fault and/or fault of other third
13 parties whose identity Defendants do not yet know.

14 Ninth Affirmative Defense

15 (Action of Others)

16 79. Defendants acted in good faith in dealing with an overseas
17 manufacturer and agents and it is the actions of the third party,
18 or parties, who caused Plaintiff's damages, if any, and who may
19 have been engaged in harming Plaintiff's intellectual property
20 rights, if any.

21 Tenth Affirmative Defense

22 (Trademark Dilution)

23 80. Defendants' sale of Angelite was so minuscule as not to
24 dilute Plaintiff's trademark or confuse the public or lead to any
25 likelihood of confusion.

26 Eleventh Affirmative Defense

27 (Waiver)

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1 81. Defendants, and each of them, are informed and believe and
2 upon that basis allege that Plaintiff has waived any right to
3 obtain the relief requested in the Complaint.

4 Twelfth Affirmative Defense

5 (Laches)

6 82. Defendants, and each of them, are informed and believe and
7 upon that basis allege that Plaintiff's claims are barred by
8 virtue of its own laches in bringing this action even though
9 Defendant had a valid California Trademark on file since 2003.

10 Thirteenth Affirmative Defense

11 (Trademarks not Valid)

12 83. Defendants, and each of them are informed and believe and
13 upon that basis allege that Plaintiff has not obtained valid
14 trademarks, or the assignment to trademarks, either in California
15 or elsewhere and/or Plaintiff or other prior owners failed to
16 properly record the marks, failed to properly affix notices,
17 failed to comply with other statutory obligations.

18 Fourteenth Affirmative Defense

19 (No Valid Statutory or Common Law Claims)

20 84. Defendants, and each of them, are informed and believe
21 that Plaintiff has failed to state a proper cause of action under
22 the Lanham Act, California Business & Professions Code Section
23 17200 et seq as well as under the common law.

24 Fifteenth Affirmative Defense

25 (No Attorneys' Fees)

26 85. Defendants, and each of them, deny that Plaintiff is
27 entitled to attorneys' fees under the common law or any statute.

28 Sixteenth Affirmative Defense

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(No Treble Damages)

1
2 26. Defendants, and each of them, deny that Plaintiff is
3 entitled to treble damages, costs, or any other statutory or
4 common law enhancement since their conduct was not at any time
5 willful, deliberate, or malicious and was in fact in good faith
6 under a valid California trademark.

17
18 Seventeenth Affirmative Defense

19 (Punitive Damages)

20 27. Defendants, and each of them, deny that Plaintiff is
21 entitled to punitive damages since Plaintiff has not set forth a
22 sufficient factual basis to justify punitive damages against the
23 individual or corporate Defendant.

24 Eighteenth Affirmative Defense

25 (Improper Parties)

26 28. Defendants, and each of them, allege that Plaintiff failed
27 to join indispensable parties (including but not limited to the
manufacture in China).

28 WHEREFORE DEFENDANTS AND EACH OF THEM pray as follows:

- 19 1. That Plaintiff take nothing by virtue of its complaint.
20 2. That Plaintiff be denied costs and attorneys' fees as well
21 as any statutory enhancement or punitive damages.
22 3. That Defendants, and each of them, be awarded costs and
23 attorneys' fees.
24 4. That Defendant's California trademark not be cancelled.
25 5. That Defendants be awarded a ruling from the Court that
26 Plaintiff's claim for punitive damages lacked probable cause.
27 6. For such other and further relief as the court may deem
28

1 just and proper.

2 THAT DEFENDANTS AND EACH OF THEM HAVE A JURY TRIAL.

3 Dated: January 11, 2007

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RONALD MARTINETTI, ESQ.

4 By Ron Martinetti
5 Ronald Martinetti
6 Attorneys for Defendants
7 Lee's General Toys, Inc.
and John Lee

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PROOF OF SERVICE

I am employed in Los Angeles County, California; I am over the age of eighteen years and not a party to the within action. My business address is 520 East Wilson Glendale, California 91206.

On this date I served Defendants' Answer to Complaint and Demand for Jury Trial

by personal delivery (to the address below)

x

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Glendale, California, addressed to:

Stephen Swinton, Esq.
Latham & Watkins
12636 High Bluff Drive, Suite 400
San Diego, California 92130-2071
Tel. 858-523-5400
FAX 858-523-5450

and via FAX to counsel for Georgia-Pacific Consumer Prod. (x)

(x) BY MAIL I sealed and placed such envelope for collection and mailing to be deposited in the mail on the same day in the ordinary course of business at Glendale, California. I am readily familiar with our law firm's practice of collecting and processing correspondence and documents for mailing. They are deposited with the U.S. Postal Service on the same day as dated, in the ordinary course of business.

(State) I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

(x) (Federal)

The papers are also to be filed via e-mail.

I declare under penalty of perjury of the state of California that the foregoing is true and correct.

Executed this January 11, 2008 at Glendale, California 91206

